



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 1879-00

26 July 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Navy on 17 March 1964 at the age of 17. Your record shows that you served for nearly a year without incident but on 4 February 1965 you were convicted by special court-martial (SPCM) of a 15 day period of unauthorized absence (UA) and were sentenced to restriction for 45 days and reduction to paygrade E-1. Almost a year later, on 11 January 1965, you were convicted by summary court-martial (SCM) of two periods of UA totalling 29 days and failure to obey a lawful order. You were sentenced to confinement at hard labor for 25 days, reduction to paygrade E-1, and a \$35 forfeiture of pay.

On 24 January 1966 you submitted a written statement in which you admitted to participating in homosexual acts for compensation. Shortly thereafter, on 25 January 1965, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for participating in homosexual acts. Your record also shows that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your commanding

officer recommended that you be issued an undesirable discharge by reason of unfitness due to homosexual involvement. The Board found your request was granted and as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received the other than honorable discharge on 4 April 1966.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your contention that you would like a fully honorable characterization of service for the time that you served. The Board also considered your contention that you only claimed to be a homosexual so that you could be discharged. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your frequent periods of UA and your admission to participating in homosexual acts for compensation. In your case, you were receiving money by participating in homosexual activities while you were living with another homosexual. The Board concluded that this activity is sufficient, even under current standards, to warrant an other than honorable discharge. Further, if you obtained your discharge by falsely claiming to be homosexual, it is well settled in the law that one who perpetrates a fraud should not benefit when it is discovered. The Board also concluded that you received the benefit of your bargain with the Navy when you were discharged at your request rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as a punitive discharge. The Board concluded your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director